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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/743,480      | 10/17/2001  | Gunter Stemple       | 3701/49519          | 2497             |

23911 7590 04/19/2005

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| EXAMINER |
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EREZO, DARWIN P

|          |              |
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| ART UNIT | PAPER NUMBER |
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3731

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/743,480

Applicant(s)

STEMPLE, GUNTER

Examiner

Darwin P. Erez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-28, 44 and 45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-28, 44 and 45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 26-28, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,400,781 to Davenport in view of US 4,121,578 to Torzala, and in further view of US 5,789,660 to Kofoed et al.

Davenport teaches a system for determining carbon dioxide of exhaled air, comprising a mask **10**; a mask adapter **34** configured to include an air tube **24** connected to an interior portion of the mask; a sensor adapter **36** connected to the mask adapter; an evaluation device (col. 2, line 53) connected to the sensor; wherein a probe **30** having an excess oxygen opening is provided to supply oxygen to the mask interior; and wherein openings **26** are provided in the mask for gas exchange between the mask interior and the outside air. Davenport is silent with regards to the specifics of the sensor adapter and the evaluation device.

Torzala teaches a system that determines carbon dioxide of exhaled air, comprising a patient interface **86**; a sensor adapter **82** having an analysis duct (the interior passage of sensor adapter **82**) connected to the mask adapter with a small dead volume to the air tube in the mask adapter such that the exhaled air is acted upon only

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by a pressure causing characteristic flow in the air tube and the analysis duct, with the analysis duct always being open to outside air at another end thereof during a measurement operation of the carbon dioxide content of exhaled air (the sensor adapter **82** is always open to room air because exit port **92** has a one-way valve to prevent room air from entering the sensor adapter but always allow expired air to flow out); a sensor mounted on the sensor adapter for generating measuring signals proportional to the carbon dioxide content (col. 3, lines 29-37)) of the exhaled air in the analysis duct; and an evaluation device **98** which is connected to the sensor and has indicating devices **68**. Torzala is silent with regards to the type of CO<sub>2</sub> sensor and how the sensor is mounted on the passageway.

Kofoed teaches a sensor adapter **22** detachably mounted on a breathing circuit, wherein an infrared emitter is detachably mounted in a receiving area within the sensor adapter (col. 6, lines 12-17; the infrared emitter is housed within adapter **22**).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the sensor adapter/evaluation unit of Torzala in the device of Davenport because it provides a control means that is responsive to the physiological needs of a recipient for establishing the proportion of oxygen in a breathable fluid. Furthermore, it would have been obvious to provide a sensor that is detachably mounted on a sensor adapter because it would allow a malfunctioning sensor to be replaced without throwing away the entire sensor adapter.

***Response to Arguments***

3. Applicant's arguments with respect to claims 26-28, 44 and 45 have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**GLENN K. DAWSON**  
**PRIMARY EXAMINER**